



Electronic Publication
of Court Proceedings
Report – April 2016
Summary of Recommendations



SUPREME COURT
OF QUEENSLAND

SUMMARY OF RECOMMENDATIONS

Guiding principles

286. Any system for the electronic publication of court proceedings must reconcile the right to a fair trial and the principle of open justice, while also taking other interests into account.
287. The right to a fair trial may be affected if undue pressure is placed upon parties, witnesses and other participants in a proceeding. For example, if a witness is inhibited from giving evidence or in giving evidence, the quality of justice is affected, and an injustice may be the result. Prejudicial publicity may imperil a fair trial and result in adjournment of trials or mistrials. Delays caused by those disruptions can have a devastating effect on individuals and their families, including victims of crime.
288. The principle of open justice ensures that courts are open to public scrutiny. It also enables the public to understand what happens in courts, the procedures by which justice is administered according to law and how justice is done in a particular case. By educating and informing the public about the administration of justice, public confidence in the court system is maintained. Fair and accurate reporting of proceedings helps avoid misunderstandings about what happens in courts, including misunderstandings fostered by individuals who misrepresent how the courts operate.
289. Proposals for “cameras in the courtroom” should be viewed in the broader context of developing practices to ensure that the public is accurately informed about the work that courts do, the justice system in general and particular proceedings which are open to the public. The electronic publication of court proceedings is one means of increasing community engagement with the justice system and educating the general public about the work of the courts.
290. Legitimate concerns exist about the effect of publication of in-court recordings of proceedings upon participants in a matter before the court, including witnesses, jurors and parties. These effects may prejudice a fair trial and have other adverse consequences for the administration of justice.
291. Proceedings are diverse. Some proceedings, such as appeals and sentences, do not typically involve witnesses. Different kinds of cases present different issues. They require separate consideration, in weighing risks against benefits. Therefore, there is no simple answer to the question of whether the broadcasting of proceedings in general, subject to safeguards, would sufficiently increase public understanding of particular cases or the justice system to justify identified risks.

Judicial control and weighing competing interests

292. This report’s recommendations relate to changes to Practice Directions which generally prohibit the use of electronic devices in courtrooms and generally prohibit the broadcasting of image and sound recordings of court proceedings. Under current arrangements, and under any future arrangements based on those recommendations, the decision to allow or to not allow the recording of proceedings remains the decision of the presiding judge in a particular case.
293. Respondents to the Issues Paper support the principle that courts should control the audio-visual recording of court proceedings because of its potential to prejudice the right to a fair

trial and to prejudice other important public interests, such as the protection of vulnerable witnesses.

Likely effect of recording and broadcasting proceedings upon participants in proceedings

Witnesses

294. A crucial issue is whether witnesses should be recorded in court for the purpose of contemporaneous or near contemporaneous broadcasting of their evidence. The concerns expressed by many respondents about the effect of such a system upon the preparedness of many witnesses to give evidence and the quality of their evidence are legitimate. Like the Scottish Report, the judges of the Supreme Court and the judges of the District Court do not favour the introduction of a system for the recording of the evidence of witnesses for either live transmission or news broadcast.
295. Recording of witnesses for documentary purposes raises some but not all of the concerns that exist with the recording of the evidence of witnesses for either live transmission or news broadcast.
296. It should remain open for decision in a particular case whether the evidence of witnesses is recorded for the purposes of live transmission, news and similar broadcasts or documentary purposes. Special consideration should be given to the position of victims and vulnerable witnesses.

Jurors

297. Current laws and practices, for good reason, seek to protect the identity of jurors from public disclosure. Jurors should feel at ease during court proceedings and private deliberations and not feel pressured to reach a particular verdict. They should not apprehend that they will be approached either during the course of a trial or after it and questioned about their decision or their deliberations. Citizens should be encouraged to perform jury service, and be protected from the threat of intimidation or harassment. They should not be filmed, photographed or audio-recorded by the media when performing their important duties.

Persons in the public gallery

298. On balance, the right of the media to report the fact that certain persons were in the public gallery does not justify the recording of images of persons in the public gallery and the broadcasting of their reactions to parts of the evidence and to what is said by counsel. There is insufficient public interest in recording the presence of persons in the public gallery to outweigh the risk that the recording of their reactions will affect their behaviour and act as a distraction. The judges favour the New Zealand position whereby members of the public gallery are not filmed.

Other participants

299. Ultimately, it should be for the judge to decide in a particular case whether any, and if so which, participants in the proceeding should be recorded in court for the purpose of having audio-visual recordings communicated to the general public.
300. Rather than have a general rule, which either allows or prohibits the in-court recording of litigants in civil proceedings, the better approach is to require an application, ordinarily to be made in advance of the trial of any such proceeding, to record litigants and others in court. If

the application was opposed, consideration could be given to the interests of the public in receiving those recordings and being better informed, and other interests, including the interests of vulnerable litigants.

301. Any system for the recording and broadcasting of proceedings should allow for individuals to apply to the trial judge for an order that they not be filmed or photographed in court or otherwise electronically recorded in court for the purpose of the recording being communicated to the general public. Such an application might be granted if, for example, the court was persuaded that recording would inhibit the person from performing his or her role in the proceeding or expose the person to a significant risk of threats or intimidation. Correctional officers should be entitled to provide to the court an objection in writing to being recorded if that will lead to them being identified.
302. Rather than adopt a consent-based system, by which the consent of lawyers and other participants would need to be obtained before they could be recorded, applications to record proceedings should be made to the court. Such an approach maintains judicial control over who, if anyone, is recorded in court for the purpose of broadcasting. It enables participants in proceedings who oppose such recording to advance arguments, and for the judge to weigh competing arguments.

Particular proceedings

Criminal trials

303. If there remains a general prohibition on recording and broadcasting the evidence of witnesses, then the recording and potential broadcasting of criminal trials would be effectively limited to opening statements by counsel, addresses by counsel to the jury and the trial judge's summing up. Depending on the case, it may also include the evidence of expert witnesses who consent to having their evidence recorded for broadcasting purposes.
304. The ability of the media to record some parts of some criminal trials, but not the evidence of all or most witnesses, is unlikely to significantly increase public understanding of particular proceedings or the justice system in general. Trials which presently go unreported are unlikely to be recorded and broadcast. The recording of in-court proceedings would add some limited film footage in high-profile cases which are already reported.
305. Even assuming guidelines and appropriate prohibitions could reduce the risks of affecting participants in the trial process and other risks to the administration of justice, the broadcasting of criminal trials is unlikely to lead to any significant increase in public understanding of particular proceedings or the justice system in general. Any slight increase in public knowledge of particular proceedings, the accuracy of reporting and public understanding of the criminal justice system is likely to be outweighed by the risk of prejudice to trial participants, particularly witnesses, and thereby prejudice a party's right to a fair trial.
306. It remains open to media organisations to apply to a trial judge in advance of a trial to record it for live transmission, broadcasting on a news or similar program or for documentary purposes. However, the judges do not support the adoption of a new system whereby, as a general rule, criminal trials are recorded and broadcast. As a result, they do not support an amendment to the current Practice Direction for criminal trials.

Sentencing

307. The arguments in favour of permitting sentencing remarks in some cases to be recorded and broadcast justifies a pilot program to monitor:
- (a) the demand by the media to record and broadcast certain sentences;
 - (b) the consequences of making arrangements for recording on the efficient and timely disposition of sentences; and
 - (c) the extent to which recording and broadcasting sentencing remarks enhances public understanding of the reasons for sentences in particular cases and the sentencing process in general.
308. The judges consider that there is merit in undertaking a pilot program to assess the practicality and costs of recording and broadcasting sentencing remarks. Any program will require the development of a suitable Practice Direction, logistical arrangements and the appointment and assistance of a Court Information Officer to develop guidelines to assist the judges and the media. Guidelines would address matters such as the exclusion of certain categories of cases and the location and field of view of cameras. The pilot program will require the timely processing of applications to record in particular cases.
309. The decision to allow or to not allow the recording of sentencing remarks would remain the decision of the presiding judge in a particular case.

Civil proceedings – first instance

310. Because there is likely to be a very small demand to record and broadcast most civil proceedings, any application to do so should occur on a case-by-case basis to the judge who is in control of the particular proceeding. Any system of recording would need to be subject to guidelines addressing matters such as the recording of the evidence of witnesses and the exclusion of certain categories of cases.

Appeal proceedings

311. As with the recording and broadcasting of sentencing remarks, the public interest in a better understanding of particular proceedings, and of the justice system in general, warrants a pilot program for the recording of appellate proceedings in appropriate cases.
312. Any system of recording would need to be subject to guidelines addressing matters such as the recording of the evidence of witnesses, the exclusion of certain categories of cases and the location and field of view of cameras.
313. An application would be made in advance of the appeal to record the proceedings for the purpose of near-simultaneous transmission, broadcasting on a news or similar program or documentary purposes. The application would indicate whether a single, fixed camera was to be used, or, if some other form of recording was proposed, the participants in the proceeding who would be recorded for broadcasting purposes.
314. Ultimately, it should be for the court to decide in a particular case whether any, and if so which, participants in the proceeding, should be recorded in court for the purpose of having audio-visual recordings communicated to the general public.

Live-streaming of all proceedings

315. Many cases in the superior courts are of no real interest to the general public. Few members of the general public attend them, the media do not report them and it seems unlikely that more than a few members of the general public would wish to view them if they were live-streamed. Monitoring the recording and transmission of evidence under a system which live-streamed all proceedings in all courtrooms would entail a very substantial cost to the community. The resources required to establish a system to record and live-stream all proceedings and to apply appropriate restrictions on what is communicated to the general public cannot be justified at this stage in the light of the absence of anticipated demand.

Resources

316. Any pilot program for the recording of sentencing remarks may entail the installation of cameras in some courtrooms. Alternatively, if the New South Wales practice is followed, a “pool camera” would be brought into the courtroom on behalf of the media organisations which are authorised to record and broadcast the sentencing remarks.
317. Any pilot program for the recording of appellate proceedings probably would entail the installation of a single camera in the courtroom in which the Court of Appeal usually sits in Brisbane and in the Banco Court.
318. A suitably-qualified Court Information Officer would be required to assist in developing the pilot programs, to liaise with media organisations to make arrangements for any pool camera to be used, and to manage the recording and transmission of information that is recorded on fixed cameras.

Guidelines

319. Whilst any recording should be under the control of the presiding judge, who may prohibit the communication of what is recorded or make orders about the conditions upon which any recorded material is broadcast, any system should be supported by guidelines. Administrative guidelines should not create rights. Guidelines will encourage a consistent approach. The Court Information Officer would assist in developing these principles.

Future reviews

320. Technological and other changes which cannot be accurately predicted justify a regular review by the judges of what changes should be made to improve public understanding of particular proceedings and the justice system in general. The outcome of pilot programs to record and broadcast sentencing remarks and appellate proceedings will inform future developments. The pilot programs and the issue generally should be regularly reviewed.

Additional ways to inform and educate the public

321. The judges of the Supreme Court and the judges of the District Court support the appointment of a Court Information Officer to assist the courts in better informing and educating the general public about the courts and the justice system in general. The Court Information Officer would assist the media to obtain important information about proceedings and to report proceedings fairly and accurately.

322. A Court Information Officer might:

- develop guidelines of the kind used in Victoria which educate judges and the media and improve working relations between them;
- produce guides for journalists to assist in the fair and accurate reporting of proceedings;
- receive media inquiries which otherwise would be made to a judge's chambers;
- notify the relevant media organisation of a significant inaccuracy in a report of a proceeding, which may prejudice a proceeding or undermine confidence in the justice system;
- prepare one or two page case summaries of important decisions which are likely to attract public and media interest;
- upload to the Court's websites the transcript or audio files of the sentencing remarks in high profile and other cases, thereby assisting the public and the media to obtain an accurate account of what was said;
- assist in processing applications under the Criminal Practice Rules to access documentary and other exhibits and implementing any orders that are made; and
- develop and implement guidelines for the electronic recording and publication of in-court proceedings.



415 George Street, Brisbane QLD 4000
www.courts.qld.gov.au



SUPREME COURT
OF QUEENSLAND